

ORIGINAL INTERVENTION



LAWRENCE V. ROBERTSON, JR. RECEIVED
ATTORNEY AT LAW

P. O. BOX 1448
TUBAC, ARIZONA 85646

2007 JUL 25 P 1:43

OF COUNSEL TO
MUNGER CHADWICK, P.L.C.

(520) 398-0411
FAX: (520) 398-0412
EMAIL: TUBACLAWYER@AOL.COM

ADMITTED TO PRACTICE IN:
ARIZONA, COLORADO, MONTANA,
NEVADA, TEXAS, WYOMING,
DISTRICT OF COLUMBIA

July 23, 2007

Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Re: In The Matter Of The Consideration, Pursuant To
A.R.S. § 40-252 To Modify Decision No. 67744 Relating
To The Self-Build Moratorium.

Docket No. E-01345A-07-0420

To Whom It May Concern:

Enclosed for filing in the above-referenced docket are the original and thirteen (13) copies of an Application For Leave to Intervene ("Application") on behalf of Mesquite Power, L.L.C., Southwestern Power Group II, L.L.C. and Bowie Power Station, L.L.C. ("Mesquite/SWPG/Bowie").

Also enclosed are two (2) additional copies of the Application. I would appreciate it if you would "filed" stamp the same and return them to me in the enclosed stamped and addressed envelope.

Thank you for your assistance with regard to this matter.

Sincerely,

Angela R. Trujillo

Angela R. Trujillo

Secretary

Lawrence V. Robertson, Jr.

Arizona Corporation Commission
DOCKETED

JUL 25 2007

DOCKETED BY	nr
-------------	----

LAWRENCE V. ROBERTSON, JR.
ATTORNEY AT LAW
P.O. Box 1448
Tubac, Arizona 85646
(520) 398-0411

BEFORE THE ARIZONA CORPORATION COMMISSION
RECEIVED

COMMISSIONERS

2007 JUL 25 P 1:43

MIKE GLEASON - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

AZ CORP COMMISSION
DOCKET CONTROL

IN THE MATTER OF THE CONSIDERATION,) DOCKET NO. E-01345A-07-0420
PURSUANT TO A.R.S. § 40-252, TO MODIFY)
DECISION NO. 67744 RELATING TO THE) APPLICATION FOR LEAVE TO
SELF-BUILD MORATORIUM.) INTERVENE

Pursuant to A.A.C. R14-3-105, Mesquite Power, L.L.C., Southwestern Power Group II, L.L.C. and Bowie Power Station, L.L.C. ("Mesquite/SWPG/Bowie") submit this joint Application for Leave to Intervene in the above-captioned proceeding. In support of their joint Application, Mesquite/SWPG/Bowie submit the following information.

I.

IDENTITY OF APPLICANTS

Mesquite/SWPG/Bowie have actively participated in a number of proceedings before the Commission in recent years relating to the development and maintenance of a viable competitive wholesale power market within the State of Arizona. Several of those proceedings related directly to the desire and ability of Mesquite/SWPG/Bowie to compete for current and future opportunities to provide capacity and energy at wholesale to Arizona Public Service Company ("APS") incident to the conduct of its operations as an electric public service corporation.

Included among those proceedings were (i) the Track "A" proceeding, (ii) the Track "B" proceeding, (iii) APS's \$500 million financing proceeding, (iv) APS's acquisition of the Sundance Generating Station assets, (v) APS's 2003 rate case, (vi) the 2005 Power Supply Adjuster/Surcharge proceeding, (vii) APS's request for an emergency interim rate increase, (viii) APS' 2005 rate case, and (ix) APS' Yuma RFP proceeding.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

II.
APPLICANTS' DIRECT AND
SUBSTANTIAL INTEREST IN
INSTANT PROCEEDING

The instant proceeding has its origins in three (3) of the aforementioned proceedings. More specifically, in the APS 2003 rate case, the Commission approved what is known as the "self-build" moratorium incident to its approval of an August 18, 2004 Settlement Agreement. The "self-build" moratorium limited those circumstances under which APS could construct or acquire electric generation facilities prior to January 1, 2015, and it required prior Commission approval in such limited circumstances. In that regard, the "self-build" moratorium constituted a strategic and substantial settlement benefit for Applicants.¹

The Yuma RFP proceeding represented the first situation in which the Commission was called upon to interpret and apply the provision of the "self-build" moratorium, as well as the applicable provisions of Decision No. 67744, in which the August 18, 2004, Settlement Agreement was modified in pertinent part and approved. The Yuma RFP proceeding was quite contested, with APS and Applicants strongly disagreeing with one another as to whether APS had satisfied the requirements for obtaining an exception to the "self-build" moratorium. In a sense, the Yuma RFP proceeding raised as many (and perhaps more) questions as (than) it answered as to how the "self-build" moratorium was to be interpreted and applied. As a result, and as a by-product of its decision in the Yuma RFP proceeding, the Commission directed its Utilities Division Staff to conduct a series of workshops on competitive power-procurement.²

In the APS 2005 rate case, the Commission had before it at the June 13-19, 2007 Open Meeting, a proposed Amendment to the recommended Opinion and Order which would have changed the nature and manner of the "self-build" moratorium. That proposed Amendment was

26
27
28

¹ In that regard, and as indicated at pages 41 and 42 of the August 18, 2004 Settlement Agreement, Mesquite/SWPG/Bowie were signatory parties.

² Several of those workshops have since been conducted. As of this juncture, it is unknown whether certain issues arising from the APS Yuma RFP proceeding can or should be addressed and resolved as a part of the work product resulting from those workshops, or whether they would be more appropriately addressed and resolved within the context of the instant proceeding.

ultimately withdrawn. In its stead the Commission adopted an Amendment which directed the Commission's Hearing Division to conduct a proceeding pursuant to A.R.S. § 40-252 for the purpose of considering whether Decision No. 67744 should be modified with respect to the "self-build" moratorium. The Procedural Order issued on July 13, 2007, in the above-captioned and docketed proceeding represents the first procedural event in the aforesaid A.R.S. § 40-252 proceeding.

Against the preceding background, it is clear that Applicants "are directly and substantially affected" by the instant proceeding. Therefore, they have satisfied the requirements of A.A.C. R14-3-105 (A).

III.

APPLICANTS' INTERVENTION WILL

NOT UNDULY BROADEN THE ISSUES

PRESENTED

The language of Decision No. 69663 directing the conduct of the instant proceeding in and of itself has articulated the threshold issue to be addressed.³ At a minimum, that issue contains two (2) components or questions. First, should the "self-build" moratorium, as set forth in the August 18, 2004 Settlement Agreement and approved in Decision No. 67744, be modified? Second, if so, in what manner? Against that background, it is clear Applicants intervention in the instant proceeding will not unduly broaden the issue(s) already presented. To the contrary, their participation will assist in providing the requisite focus. Accordingly, the requirements of A.A.C. R14-3-105 (B) have been satisfied.

³ In pertinent part, Decision No. 69663 states as follows:

"The Commission believes that it is in the public interest to conduct a proceeding pursuant to A.R.S. § 40-252 to consider modifying Decision No. 67744 relating to the self-build option." [Finding of Fact No. 82, page 146, lines 8-10]

*

*

*

"IT IS FURTHER ORDERED that the Hearing Division conduct a proceeding pursuant to A.R.S. § 40-252 to consider modifying Decision No. 67744 relating to the self-build option." [page 157, lines 13-14]

LAWRENCE V. ROBERTSON, JR.
ATTORNEY AT LAW
P.O. Box 1448
Tubac, Arizona 85646
(520) 398-0411

IV.

CONCLUSION

WHEREFORE, for the reasons discussed above, Mesquite/SWPG/Bowie hereby request that the Commission issue a Procedural Order in the above-captioned proceeding (i) granting their joint request for intervention, and (ii) according them status and full rights as parties of record.

Dated this 23rd day of July, 2007.

Respectfully submitted,

Lawrence V. Robertson, Jr.
Attorney for Southwestern Power
Group, II, L.L.C and Bowie
Power Station, L.L.C

and

Theodore Roberts
Lawrence V. Robertson, Jr.
Attorneys for Mesquite Power, L.L.C.

By: Lawrence V. Robertson, Jr.

Lawrence V. Robertson, Jr.
P. O. Box 1448
Tubac, Arizona 85646
Phone: (520) 398-0411
Facsimile: (520) 398-0412
Email: TubacLawyer@aol.com

Original and thirteen (13) copies of the foregoing mailed this 23rd day of July, 2007 to:

Docket Control Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

A copy of the same served by e-mail or first class mail this same date to:

LAWRENCE V. ROBERTSON, JR.
ATTORNEY AT LAW
P.O. Box 1448
Tubac, Arizona 85646
(520) 398-0411

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Lyn A. Farmer,
Chief Administrative Law Judge
Hearing Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Christopher Kempley, Chief Counsel
Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Ernest Johnson, Director
Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

